***THE HONOURABLE SRI JUSTICE V.V.S.RAO**

+WRIT PETITION No.2097 of 2003

% 09.8.2007

Kantheti Rama Krishna, S/o.Late Antarvedi

...Petitioner

AND

$ The Agent to the Government, East Godavari at Kakinada
And others.

...Respondents

! COUNSEL FOR PETITIONER: Sri M.Subba Reddy

^ COUNSEL FOR RESPONDENTS: G.P for Social Welfare

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>HEAD NOTE:

? CASES REFERRED:

1. (1995)6 SCC 545 = AIR 1996 SC 224
2. 1987(2) ALT 118 (NRC)
3. (2004) 10 SCC 65
4. AIR 1982 AP 1 (FB)
5. (1977) 2 SCC 435

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Between:
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THE HON'BLE SRI JUSTICE V.V.S.RAO

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ORDER:

Land admeasuring Acs.81.14 in survey Nos.3/5, 16/1, 16/2, 16/3, 16/4, 16/5, 16/6, 19/1, 19/3, 24/2, 24/4 and 24/5 situated at Lothavari Veedhi, H/o.Acheyyapeta village of Addateegala Mandal in East Godavari District, was absolute property of Lotha Atchi Reddy – a tribal; the predecessor of respondents 3 to 7 herein. Atchi Reddy had obtained loan from Konalova Cooperative Trade Society, Konalova village (the cooperative society, for brevity) by mortgaging his land. He committed default in repayment. The mortgaged property was auctioned by the cooperative society for realizing the loan amount. Prathipadu Satyam, a resident of Samarlakota, who is a non-tribal, purchased the mortgaged property. The sale was allegedly confirmed by the Deputy Registrar of Cooperative Societies and District Registrar, Kakinada, as a result of which a registered sale deed bearing document No.413/44 was registered on 04.5.1944. In 1964, Satyam sold the land and registered a sale deed in favour of Moleti Appa Rao and others, who are non-tribals. The father of the petitioner along with one Ganga Raju purchased an extent of Acs.54.00 from six vendees of Satyam. The family of the petitioner was enjoying the property.

In 1988, the Special Deputy Tahsildar (SDT, for brevity), Addateegala, filed a complaint under Section 3 of Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (the Regulation, for

brevity), as amended by Regulation I of 1970, on behalf of respondents 5 to 7 praying the SDT – respondent No.8 herein; to eject petitioner's father and Ganga Raju and restore possession to them. The same being LTRP No.191/88 was allowed by the third respondent on 30.5.1989 ordering ejectment of the non-tribals. Aggrieved by the same, the father of the petitioner filed CMA No.38/89 before the Agent to the Government, who dismissed the same on 18.10.1994. Then a revision petition was filed before the Government. Simultaneously W.P.No.21792 of 1994 was filed seeking suspension of the orders of the Agent during the pendency of the revision. The said writ petition was disposed of. In the revision, Government issued orders vide G.O.Ms.No.86, dated 01.9.1986, directing the SDT to conduct fresh enquiry. In obedience thereto, 8th respondent again conducted enquiry and passed orders on 22.11.2001 in LTRP No.57/93 ordering ejection. In the meanwhile, the father died and the petitioner came on record as his legal representative. Aggrieved by the orders dated 22.11.2001, petitioner filed CMA No.24 of 2002, which was disposed of by the first respondent by order dated 21.11.2002. This order is assailed in this writ petition *inter alia* contending that in view of the confirmation of the sale by the District Registrar, Kakinada, the said sale in favour of Satham, is not illegal and that the subsequent sale by the vendees of Satyam in favour of the petitioner before coming into force of Regulation I of 1970 is not hit by the provisions of the Regulation I of 1959.

The second respondent filed a detailed counter affidavit opposing the writ petition. While tracing chronology of the events leading to filing of the writ petition, it is alleged that the sale in favour of Satyam by the cooperative society without obtaining permission from the Agent to the Government under Section 4 of the Agency Tracts Interest and Land Transfer Act, 1979 (Act 1 of 1917) is null and void and therefore the subsequent sale in favour of petitioner's father is not valid. It is also alleged that the attachment of the property to Lotha Atchi Reddy without obtaining permission from the Agent under Section 6 of Act 1 of 1917 is void. A categorical averment is made that permission of the Agent was not obtained while transferring the land in favour of Satyam.

Learned Counsel for the petitioner submits that as the land was sold in favour of Prathipadu Satyam in an auction conducted by the cooperative society, Section 3(1)(a) of the Regulation is not applicable to the facts of the case. Secondly, he submits that when sale was effected on 04.5.1944 in favour of Satyam, Act 1 of 1917 has no application. Alternatively he submits that as the auction sale by the cooperative society in favour of a Prathipadu Satyam, a non-tribal, was

confirmed by the Deputy Registrar of the Societies and the District Registrar, Kakinada, Section 4 of Act 1 of 1917 has no application. He placed strong reliance on the decision of the Supreme Court in **Deputy Collector v S.Venkata Ramanaiah**[1].

Per contra, learned Government Pleader for Social Welfare submits that when auction sale was effected by the cooperative society in favour of Satyam, Act 1 of 1917 was very much in force. Therefore, unless it is shown that the mortgaged property was attached and sold in accordance with Section 6 of Act 1 of 1917, the sale is not valid and is void. Therefore the provisions of Regulation I of 1959 are attracted. He relies on the decision of this Court in **P.Ramabhadri Raju v State of A.P**.[2] to buttress his contention that the burden of proof has not been discharged by the petitioner. Secondly he submits that even a Court sale or sale by cooperative society without complying with the provisions of Act 1 of 1917 or Regulation I of 1959 is prohibited. Reliance is placed on the decision of the Supreme Court in **Amrendra Pratap Singh v Tej Bahadur Prajapati**[3].

The points that arise for consideration is whether the sale by Konalova Cooperative Trade Society in favour of Prathipadu Satyam and subsequent sales in 1964 and 1966 are not rendered void under the provisions of Act 1 of 1917 and Regulation I of 1959 as amended by Regulation I of 1970.

Regulation I of 1959 as originally promulgated prohibiting transfer of immovable property by a tribal in favour of non-tribal. There was no such prohibition for transfer of immoable property by non-tribal to non-tribal. This lacuna was remedied by amending Section 3 of Regulation I of 1959 by Regulation I of 1970, which came into force on 03.2.1970. A question arose whether transfer of immovable property from non-tribal to another non-tribal before coming into force of the Regulation I of 1959 and/or before coming into force of Regulation I of 1970 are also rendered null and void and whether Regulation I of 1970 operates retrospectively. I n **Gaddam Narsa Reddy v Collector, Adilabad District**[4], a Full Bench of this Court considered the above question and laid down as under.

> A transfer of immovable property situate in agency tracts, made after the coming into force of the A.P. Scheduled Areas Land Transfer Regulation I of 1959 or its amendment Regulation II of 1963 or Amendment Regulation I of 1970, even if made in compliance with the provisions of the Transfer of Property Act, Indian Registration Act or Hyderabad Tenancy and Agricultural Lands Act or any other law applicable thereto, is null and void, if it contravenes the provisions of S.3(2) of the said Regulation, the authorities

> mentioned therein can decree ejectment of the persons claiming under such transfer and pass orders restoring the lands to the transferors or their successors or pass orders for disposing of the said property as directed therein.
>
> Section 3(1) of the Regulation I of 1959 and its amendments by Regulation II of 1963 and I of 1979 have no retrospective operation and do not affect transfers made prior to the said Regulation or its amendments coming into force and the authorities under Section 3(2) of the Regulation have no jurisdiction to pass orders in relation to the immovable property covered by such transfers.

I n **S.Venkata Ramanaiah** (supra), the Supreme Court considered the question whether Regulation I of 1970 has retrospective effect or not. The Supreme Court holding that the provision is not retrospective laid down as under.

> On a conjoint reading of Section 3(1)(a) and Section 3(2)(a), it becomes clear that the section seeks to hit the transfers effected after the section came into force and possession only under such invalid transfers is sought to be dealt with for the purpose of eviction of transferees and restoration of possession to transferors, as the case may be, under Section 3(2)(a) of the Regulation. Consequently, the alternative submission of learned senior counsel for the authorities that even though transfer of immovable property in the Agency tracts may not be hit by section 3(1)(a) still possession under such transfers could be restored to the original transferor under Section 3(2)(a), cannot be countenanced. Section 3(2)(a) is also corollary to Section 3(1)(a) and cannot have any independent role to play. Nor can it cover any area, which is not encompassed by the sweep of Section 3(1)(a).

In view of the above legal position, the transfer of land by Prathipadu Satyam in favour of seven non-tribals in 1964, and the subsequent purchase of the land by petitioner's father and Ganga Raju from six non-tribals in 1966 *prima facie* cannot be treated as void transfer. Therefore the question that would arise – as rightly pointed out by the learned Government Pleader – is whether Prathipadu Satyam had any valid title to transfer the land belonging to tribal and whether the transfer of land in auction sale by cooperative society is not rendered void being in contravention of the provisions of Act 1 of 1970.

Section 2(f) of Act 1 of 1917 defines "Transfer" means mortgage with or without possession, lease, gift, exchange or any other dealing with property not being a testamentary disposition and includes a charge or any contract relating to immovable property. The definition of "Transfer" is so broad that not only every kind of Transfer but also

"dealing with property" is treated as Transfer. Section 4(1) of Act 1 of 1917 renders any transfer of immovable property in agency tracts by a member of hill tribe to a person not belonging to hill tribe, was null and void unless: (i) such Transfer is made by another member of hill tribe, (ii) such Transfer is made by hill tribal to non-tribal with previous consent of Agent to the Government. Section 6 is relevant and it is to the effect that in execution of money decree against member of a hill tribe no immovable property owned by him shall be liable to be attached and sold except as prescribed. Rule 7 empowers the State Government to make Rules. In pursuance of such power, Rules are promulgated. Rule 5 of these Rules (made vide order No.197/1989 of Governor-in-Council) lays down that there shall be no sale of immovable property under Section 7 of Act 1 of 1917 without written permission of Assistant Agent and that such property shall be sold only to a member of hill tribal unless ordered by Assistant Agent. It also prohibits public auction of the immovable property without permission of Agent to the Government.

It is not the case of the petitioner that cooperative society sold the property to Prathipadu Satyam in a public auction after obtaining permission of Agent/Assistant Agent. The sale is sought to be justified contending that the auction sale was confirmed by the Deputy Registrar and District Registrar of Cooperative Societies, Kakinada. These two officers cannot be treated as Agents or Assistant Agents for the purpose of Act 1 of 1917. Indeed as mandated under Rule 6 read with Rule 5 of Act 1 of 1917, when the property of a hill tribal has to be sold in execution of a decree, it should be sold only to a member of hill tribe. Therefore viewed from any angle, the sale by a cooperative society in favour of Satyam was itself null and void, which did not confer any alienable and marketable title on the purchaser. Needless to say that subsequent sales by Satyam in favour of others and sale by those persons in favour of father of petitioner and Ganga Raju cannot be recognized in law. The burden has to be discharged by the person who alleges that the sale in 1944 did not violate Act 1 of 1917 {see **P.Ramabhadri Raju** (supra)} and the petitioner failed to discharge his burden.

In **Amrendra Pratap Singh** (supra), the facts are as follows. A piece of agricultural land in Sundergarh originally belonged to Chand Oram and Pera Oram, persons belonging to aboriginal tribe. Orissa Merged States (Laws) Act, 1950, by Section 7 prohibited "transfer of immovable property" from member of aboriginal tribe to a member of non-aboriginal tribe unless such transfer is made with previous permission of the Sub-Divisional Officer concerned. Nonetheless, in 1962, these two tribal owners transferred their property to another

person belonging to scheduled tribe. He in turn sold the property in two parts on 07.4.1964 to two non-tribals, after obtaining permission from the Sub-Divisional Officer. By that time, the Governor of Orissa promulgated Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Regulation, 1956. Section 3 thereof prohibited transfer of immovable property by a member of scheduled tribe unless it is made with the previous consent of the competent authority. One of the purchasers sold the portion of the land. In 1967, Bahdur Prajapati purchased the land from original holders (aboriginal tribes) and also encroached upon small portion belonging to Amarendra Pratap Singh. In 1970, Amarendra Pratap Singh filed a suit for declaration of title, recovery of possession and permanent injunction. The plea in opposition was that the defendants perfected the title by adverse possession. The trial Court decreed the suit and the High Court found that the title of the plaintiff to have been proved but held that the defendant had been in adverse possession of the property for the prescribed statutory period of twelve years and therefore decree was denied. Before the Supreme Court the question arose whether Bahdur Prajapati can be said to have perfected title by way of adverse possession having regard to the fact that original holders belonging to scheduled tribe and their successor in title was also a person belonging to scheduled tribe. The Apex Court referred to the definition of transfer of immovable property and held that, the same possession permitting a right in immovable property vesting in a tribal or acquired by non-tribal unless permitted by the previous permission of the competent authority. After making such observation, the Apex Court ruled as under.

> The law laid down by this Court is an authority for the proposition that the court shall step in and annul any such transaction as would have the effect of violating a provision of law, more so when it is a beneficial piece of social legislation. A simple declaratory decree passed by a civil court which had the effect of extinguishing the title of a member of a Scheduled Tribe and vesting the same in a non-member, was construed as "transfer" within the meaning of Section 165(6) of the M.P. Land Revenue Code, 1959. **Thus, we are very clear in our minds that the expression "transfer of immovable property" as defined in clause (f) of para 2 of the 1956 Regulations has to be assigned a very wide meaning. Any transaction or dealing with immovable property which would have the effect of extinguishing title, possession or right to possess such property in a tribal and vesting the same in a non-tribal, would be included within the meaning of "transfer of immovable property".**
>
> (emphasis supplied)

Therefore the sales in 1964 and 1966 squarely fall within "transfer of immovable property" as defined in Act 1 of 1917 and

Regulation I of 1959 because "Transfer" *inter alia* means, "any other dealing with immovable property". In **Amrendra Pratap Singh** (supra) referring to various decisions including the decision in **State of M.P. v Babu Lal**[5], the Supreme Court observed that, "the Court shall step in and annul any such transaction as would have the effect of violating a provision of law, more so when it is a beneficial piece of social legislation". Applying the same principle, it must be held that the transaction by way of auction sale by Konalova Cooperative Trade Society in favour of Prathipadu Satyam is null and void and cannot be recognized in law. As a sequence thereof, the subsequent sales are void.

Learned Counsel for the petitioner placed strong reliance on **S.Venkata Ramanaiah** (supra) to contend that after coming into force of Regulation I of 1959, Act 1 of 1917 has no application to the transactions took place prior to coming into force of Regulation I of 1959. The submission is devoid of any merit for reasons more than one. Section 10 of Regulation I of 1959 lays down that the provisions of the Regulation shall not affect (i) any transfer made or sale effected in execution of a decree before the commencement of Act 1 of 1917, or (ii) any transfer made or sale effected in execution of a decree after commencement of Act 1 of 1917 and before commencement of Regulation I of 1959 only if such transfer of sale was valid under the provisions of Act 1 of 1917. If some one has to come within purview of saving clause under Section 10, this has to be necessarily shown that the sale or transfer of immovable property by a member of hill tribe to a non-tribal is valid under Act 1 of 1917. This was also considered by the Supreme Court in **S.Venkata Ramanaiah** (supra). After referring to Section 9 (which repealed by Act 1 of 1917 to a limited extent) and Section 10, in paragraph 22, the Apex Court laid down as under.

> It is not in dispute between the parties that the said Act of 1917, did not apply to Telangana area. Consequently reference to Section 9 in connection with lands situated in Telangana area becomes irrelevant. Similarly Section 10 which effects savings in cases where the earlier Act of 1917 which had applied stood repealed by Section 9, also becomes irrelevant. However, so far as areas which were earlier governed by the Act of 1917 are concerned, even for them, we fail to appreciate, how Section 9 can be pressed in service by learned senior counsel for the appellant authorities to cull out an implied retrospective effect of the Regulation. In order to show that Section 3 of the Regulation had any implied retrospective effect provisions pertaining to repeal and savings contained in Sections 9 and 10 would be of no assistance. No other provisions of the Regulation could be pressed in service by learned senior counsel for supporting

her contention that Section 3(1)(a) was retrospective by any necessary implication.

In this case, the petitioner as concluded supra has failed to discharge the burden of proof to show that the transfer of immovable property in 1944 in favour of Prathipadu Satyam was valid under Act 1 of 1917. Therefore the submission of the learned Counsel for the petitioner is devoid of any merit. The writ petition is devoid of any merit and deserves to be dismissed.

In the result, for the above reasons, the writ petition fails and is accordingly dismissed. There shall however be no order as to costs.

August , 2007 (**V.V.S.RAO,J**)

NOTE:
(1) Dispatch order copy in one week.
(2) **L.R. Copy be marked**.
(By order)
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[1] (1995)6 SCC 545 = AIR 1996 SC 224

[2] 1987(2) ALT 118 (NRC)

[3] (2004) 10 SCC 65

[4] AIR 1982 AP 1 (FB)

[5] (1977) 2 SCC 435